

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF ILLINOIS
3 EASTERN DIVISION

4 VISHVA DESAI, et al., } No. 2011 C 1925
5 } February 19, 2013
6 } 9:35 a.m.
7 v.
8 ADT SECURITY SERVICES, INC., et al., }
9 }
10 }

11 TRANSCRIPT OF PROCEEDINGS - MOTION
12 BEFORE THE HON. ELAINE E. BUCKLO

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1 THE CLERK: 11 C 1925, Desai versus ADT Security
2 Services; motion.

3 THE COURT: Good morning.

4 MR. BAUGHMAN: Good morning, Your Honor. Michael
09:36:25 Baughman for ADT.

6 MR. LEJA: Good morning, Your Honor. John Leja for
7 ADT.

8 MR. BURKE: Good morning, Judge. Alexander Burke for
9 the plaintiffs.

09:36:33 10 MR. MURPHY: Good morning, Your Honor. Brian Murphy
11 on behalf of the plaintiffs.

12 MR. McCUE: Matthew McCue for the plaintiffs.

13 MS. BARRETT: And Nicole Barrett for the third-party
14 defendant Elephant Group.

09:36:40 15 THE COURT: Good morning.

16 I'm certainly willing to give you preliminary
17 approval, so I guess I just need to give you some dates.

18 MR. BAUGHMAN: That's great, Your Honor.

19 I guess one point from the defendant ADT's perspective
09:36:53 20 is we certainly support preliminary approval of the settlement.
21 We just want -- and we filed some briefs on this. We just want
22 to point out we are spending \$4 million on notice, so we want
23 to make sure the Court is comfortable with the notice plan.

24 THE COURAT: Yes, I am. I thought it was appropriate
09:37:04 25 that the two parts, the two kinds of notice.

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1 MR. BAUGHMAN: Okay. And the majority of the class is
2 going to receive publication notice rather than direct notice
3 here.

4 THE COURT: Well, that's right. You know, I may not
09:37:15 5 have, and I always do look at the notice things. Just tell me
6 again, where is the publication notice going to be?

7 MR. MURPHY: Your Honor, if I might, it's going to be
8 published in a two-fifth-page ad in Gray Magazine, a
9 two-fifth-page ad in USA Weekend, a full-page ad in Reader's
10 Digest --

11 THE COURT: Reader's Digest just went into bankruptcy.

12 MR. BAUGHMAN: They are still operating I believe.

13 MR. MURPHY: I believe they are still operating.

14 One-third page in Good Housekeeping, a third page in
09:37:42 15 People Magazine, a third page in TV Guide, a third page in
16 Sports Illustrated, a third page in Time Magazine and a sixth
17 page in the Friday edition of USA Today. Your Honor, that's
18 designed to reach approximately 67 percent of --

19 THE COURT: People that you think would have --
09:37:59 20 frankly, I was more concentrating on what people would have to
21 do and whether the notice was clear. I don't know what
22 people -- it doesn't sound like people read anything anymore.

23 All of these publications still exist?

24 MR. MURPHY: They do, Your Honor.

09:38:20 25 THE COURT: And you have some reason to think this is

1 where they go, where ADT or -- well, I guess it wasn't ADT
2 directly.

3 MR. MURPHY: If you notice, the publications are sort
4 of broad, have a wide breadth in terms of interest and things
5 of that nature.
09:38:33

6 THE COURT: USA Today I assume is read by business
7 people traveling or something. I don't know who else reads USA
8 Today. Nobody subscribes to it, do they?

9 Okay, Reader's Digest. Let's see. That's in
10 bankruptcy, but I guess that means not enough people are
11 reading it. I don't know if they are anymore.
09:38:48

12 TV Digest? I thought it went out of business. I
13 guess not.

14 What else? Time Magazine? Time Magazine still
15 exists, right?
09:39:03

16 MR. MURPHY: People Magazine, Your Honor, Sports
17 Illustrated. There is also a --

18 THE COURT: And some women's magazine?

19 MR. MURPHY: There is also some web-based advertising
20 that's part of it. Your Honor, we sort of picked as broad a
21 range of publications --
09:39:14

22 THE COURT: All right. As he points out, spending a
23 lot of money on it. Okay, this sounds okay to me. And I did
24 look at the substance of it, and I thought for that kind of
25 thing, you don't know if they ever got a call, it was
09:39:32

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1 appropriate.

2 MR. BAUGHMAN: And just so it's clear, there will be
3 folks who give a release who probably don't see the notice and
4 don't get payment. That's one of the reasons there is a
5 provision in the agreement for some changes in business
6 practices which we think would be adequate consideration for
7 those who don't receive monetary coverage. It's a very broad
8 release, but we think, you know, under the circumstances,
9 that's what ADT was willing to settle for here. We think it's
10 reasonable.

11 THE COURT: Now you're making me wonder what I missed.
12 Where did I put it? Hold on a minute. Let me just go find it.

13 (Pause.)

14 THE COURT: Okay. Now, just tell me what you're
15 referring to.

16 MR. BAUGHMAN: The release or the business practice?

17 THE COURT: Yes. It's the release I guess I have to
18 say I probably hadn't read.

19 MR. BAUGHMAN: Yes. It's under the definition of
20 covered calls. That's sort of who is giving a release.

21 THE COURT: Where is it?

22 MR. BAUGHMAN: Section 2.13 of the settlement
23 agreement. It's also in the motions. 2.13 of the agreement.
24 That's basically who the settlement class is.

25 THE COURT: Do you think you could have put it in

1 smaller print?

2 Okay. So tell me what it will do.

3 MR. BAUGHMAN: Basically --

4 And you guys are welcome to jump in.

09:42:00 5 THE COURT: I don't want to leave it that they can
6 turn around and do the same thing again.

7 MR. BAUGHMAN: Here's the thing. The theory of the
8 case, Your Honor, is not that ADT made any particular calls.

9 THE COURT: I know; it's that they have people --

09:42:09 10 MR. BAUGHMAN: Right, that calls were made on their
11 behalf. Now, these are calls that ADT didn't know about,
12 didn't authorize from our perspective, didn't have anything to
13 do with from our perspective. So the release covers anyone
14 from what, January 1st, 2007, through the date the agreement
15 was signed who received a call by anyone who was trying to sell
16 in any way ADT Security services.

17 So whether it mentioned ADT, whether it was made by
18 ADT, whether it was made by an ADT authorized dealer, it could
19 be someone who was a lead generator who was trying to sell
20 these to ADT. Basically ADT is seeking total peace from this
21 settlement, they are spending a lot of money to get total peace
22 to any call that in any way relates to trying to sell ADT
23 leads.

24 Is that --

09:42:56 25 MR. McCUE: Correct.

1 MR. BAUGHMAN: Which is why publication notice is
2 necessary, Your Honor, because we just don't know who those
3 folks are.

4 THE COURT: Well, on its face that makes sense.

09:43:15 5 So what is it you're worried about?

6 MR. BAUGHMAN: Your Honor, I think you should approve
7 the settlement. My concern is I don't want objectors coming in
8 six months down the road after we spent \$4 million and saying,
9 "Oh, this release is too broad" or "Oh, the notice wasn't
09:43:31 10 sufficient." I just want to make sure Your Honor is in
11 agreement with us that this release is appropriate.

12 THE COURT: Well, I am at the moment. I mean, I
13 can't -- it is preliminary approval. I don't have some
14 objection.

09:43:41 15 MR. BAUGHMAN: I understand.

16 THE COURT: It's been a while since I had an objection
17 on a settlement, but I can't, you know, I can't utterly and
18 finally say that somebody couldn't come in and say something
19 that convinced me otherwise. I can't do that. I'm not in a
09:43:55 20 position --

21 MR. BAUGHMAN: Understood, Your Honor, but we just
22 want to make sure Your Honor knows all the facts ahead of time.
23 If you have any questions, I understand the claims
24 administrator is here to answer any questions about the notice.
09:44:07 25 But we just want Your Honor going into it with eyes wide open

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1 so that any issues are resolved before we spend the \$4 million
2 rather than after.

3 THE COURT: Well, I am trying to think what the
4 alternative would be. So your concern is that somebody --

09:44:26 5 MR. BAUGHMAN: There would be no settlement I think
6 would be the alternative.

7 THE COURT: Your concern is if somebody would come in
8 and say what?

9 MR. BAUGHMAN: They could say the release is too
09:44:36 10 broad, they could say that, you know, they disagree with the
11 publication notice.

12 THE COURT: Well, the release releases ADT from any
13 claims for anything that's made up until today or, from any
14 calls.

09:44:50 15 MR. BAUGHMAN: Right, whether ADT made the calls,
16 whether someone ADT has no idea made the calls, whether ADT is
17 mentioned in the calls, anything that can in any way be traced
18 to ADT is released. So it could be an independent --

19 THE COURT: Well, there's got to be some date in which
09:45:10 20 that's the case. Otherwise, it's true, it's just ongoing.

21 MR. BAUGHMAN: Well, it's through the date of the
22 settlement agreement.

23 THE COURT: Right. I think that's right.

24 All right. Anything else?

09:45:25 25 MR. BAUGHMAN: I don't think so, Your Honor. I mean,

1 the notice, it's publication notice.

2 THE COURT: I'm comfortable with these.

3 MR. BAUGHMAN: Some folks won't receive consideration,
4 but they do get -- I don't know if change in business practices
5 is the right term now, but it's set forth in detail in Section
6 4.6 where we are making certain requirements on our authorized
7 dealers relating to prerecorded messages. So folks who don't
8 receive cash consideration will receive that.

9 THE COURT: Let me ask this. How did this ever happen
10 in the first place? Why is it? I wouldn't decide to -- I
11 mean, why would somebody decide to call, start calling people
12 and say "I'd like to sell you an ADT system"?

13 MR. BAUGHMAN: They tried --

14 THE COURT: Why if they haven't talked to ADT?

15 MR. BAUGHMAN: Because I think what they do is they
16 try to land the customer and then sell it to somebody who will
17 sell it to somebody who will sell it to somebody who will sell
18 it to ADT.

19 THE COURT: There are lots of security firms.

20 MR. BAUGHMAN: They might sell it to Pinnacle, they
21 might sell it to somebody else as well.

22 These folks are independent lead generators who are
23 out there trying to sign people up for security systems which
24 they will sort of sell down the line, which under the
25 plaintiff's theory ends up eventually with ADT.

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1 THE COURT: Okay.

2 MR. BAUGHMAN: So there's a line of like five entities
3 involved with respect to the Desai call, for example.

4 So if it will help, for example, with respect to the
09:47:09 5 call involving Desai, the call was made by a company called
6 EMI, which is an independent lead generator. Then they get
7 somebody on the phone and say "Hey, are you interested in a
8 security company?" Then they try to transfer it to a company
9 called Paramount. Paramount in turn tries to sell it to a
09:47:26 10 company called Savology. Savology in turn tries to sell it to
11 an ADT dealer.

12 Now, our defense in the case is all along the lines
13 there are contracts which say you can't use prerecorded
14 messages, and that's why our defense in this case has been we
09:47:38 15 didn't have anything to do with these calls, we didn't
16 authorize them; in fact, we prohibited them. But that's sort
17 of the scenario. And the release will cover all of that for
18 every conceivable lead generator.

19 THE COURT: That's fine.

09:47:48 20 MR. BAUGHMAN: Okay.

21 THE COURT: That's fine subject to somebody coming
22 back with something really convincing, but it sounds
23 appropriate to me.

24 MR. BAUGHMAN: Very good.

09:47:56 25 THE COURT: Okay. What dates do you people want?

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1 Okay. So this is the date of preliminary approval. Notices
2 are going to get published and go out to the extent they can go
3 out when, two weeks?

4 MR. MURPHY: By March 12th, 2013, Your Honor.

09:48:30 5 THE COURT: Okay. And their time?

6 MR. MURPHY: The objection exclusion date we have
7 running from today, Your Honor, would be May 10th, 2013.

8 THE COURT: That's fine. Okay.

9 MR. MURPHY: And then final approval, Your Honor, I
09:48:45 10 think the earliest date would be June 10th of 2013.

11 THE COURT: I usually put these at 1:30 on a Friday
12 afternoon. Would June 21 be all right or are you trying to
13 avoid a Friday?

14 MR. MURPHY: No, Friday is fine.

09:49:12 15 MR. BAUGHMAN: Let me check.

16 The 21st is fine.

17 THE COURT: All right.

18 MR. MURPHY: Your Honor, then under the calendar we
19 have final approval submissions two weeks before that, so I
09:49:56 20 believe that would be June 7th.

21 THE COURT: Okay. That's good.

22 All right. Thank you.

23 MR. BAUGHMAN: Thank you, Your Honor.

24 MR. MURPHY: Thank you, Your Honor.

09:50:01 25 MR. BURKE: Thank you, Your Honor.

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1 Judge, should we email you a copy of the proposed
2 final approved order?

3 THE COURT: We should have it. Don't we?

4 THE CLERK: No, it's not in the box.

09:50:11 5 THE COURT: Okay. There is some, how do they do that?

6 MR. BURKE: I have a paper copy if that's more useful
7 for Your Honor.

8 THE COURT: However you enter it.

THE CLERK: You can send it in the proposed order.

09:50:26 10 MR. BURKE: All right.

11 THE COURT: There's some special thing that says
12 proposed order. Either put it in there and leave the dates
13 blank or put the dates in and send the whole thing.

14 MR. BURKE: Thank you.

09:50:36 15 MR. MURPHY: Thank you.

16 MR. LEJA: Thank you, Your Honor.

17 || (Proceedings concluded.)

C E R T I F I C A T E

I, Michael P. Snyder, do hereby certify that the foregoing is a complete, true, and accurate transcript of the proceedings had in the above-entitled case before the Honorable ELAINE E. BUCKLO, one of the judges of said Court, at Chicago, Illinois, on February 19, 2013.

/s/ Michael P. Snyder
Official Court Reporter
United States District Court
Northern District of Illinois
Eastern Division

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